



Office of the Attorney General
State of Texas

December 9, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Paige C. Kyle
Walsh, Anderson, Underwood, Schulze & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR97-2691

Dear Ms. Kyle:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111059.

You represent the Poteet Independent School District (the "district"). The district received a request for a copy of the investigative report concerning district superintendent Joe N. Garza Jr., which was presented to the district's board of trustees in a closed executive session. We note initially that the request for information was received by the district on July 30, 1997, but the district did not seek a decision from this office until September 26, 1997.

In your correspondence to this office, you asserted that the report at issue is protected from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code. However, these exceptions to disclosure may be waived if not timely raised. Open Records Decisions No. 630 (1994) (552.107 attorney-client privilege waived by failure to meet ten-day deadline), 473 (1987) (exceptions 552.103 and 552.111 waived by failure to meet ten-day deadline). For open records requests received by a governmental body prior to September 1, 1997, section 552.301 provides that a request for a decision from a governmental body to this office is timely received by this office if it is made no later than the tenth calendar day after the date the governmental body received the written request for information.¹ Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302. Because the district did not request a decision

¹Effective September 1, 1997, section 552.301 allows a governmental body ten *business* days to request a decision from this office when it desires to withhold information under one of the enumerated exceptions in Chapter 552 of the Government Code. See Act of June 1, 1997, H.B. 951, § 5, 75th Leg., R.S.

within ten days from the date of the request for information, this information is presumed public.

However, this presumption may be overcome if the governmental body shows a compelling interest to withhold the information. Open Records Decision No. 515 (1988). Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. In your correspondence to this office, you assert that the superintendent's privacy interests creates a compelling interest to overcome the presumption that the report is public. Based upon your assertion that the document is protected from disclosure because of a compelling interest, we asked you to submit the report at issue so that this office could review the document.

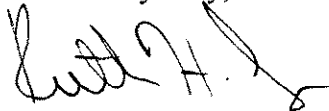
Our review of the document indicates that it is made confidential by law. Section 21.355 of the Education Code provides:

A document evaluating the performance of a teacher or administrator is confidential.

This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). An administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the report at issue is confidential under section 21.355 of the Education Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 111059

Enclosures: Submitted document

cc: Mr. Jesse Clements
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(w/o enclosures)